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Serving District 11 — Elkhart and St. Joseph Counties

2006 LEGISLATIVE UPDATE

## Legislators Act on Many Issues

Dear Friends,

One of the busiest and most substantive "short" sessions of the Indiana General Assembly adjourned on March 14th. "Long" sessions are held during odd-numbered years and focus on the two-year state budget and other weighty matters, adjourning in mid-April. In the past, short sessions were reserved for a few major issues, mainly focusing on emergency situations. Not this time.

Governor Mitch Daniels' highway construction and funding program, called "Major Moves," dominated the headlines. This newsletter reviews that legislation on page 2. Many other bills of substance were debated, and many passed, as well.

Some progress was made on property tax reform, which is discussed beginning on page 3. Much time and effort was spent dealing with the complex nature of eminent domain law, as described on this page. Improvements to our judicial system are discussed on page 4.

Many other important topics filled this year's legislative session. For example, a major bill concerning telecommunication reform passed to allow for more competition, which could lower cable rates and create jobs in our state. A bill to increase Indiana's capacity for "clean fuel" production also progressed.

In addition, a law passed enabling the collection of DNA samples from felons held in *local* correctional facilities, which will add to our state DNA database. Last year I authored similar legislation, to expand DNA collection to include all felons housed in *state* facilities. I believe it is crucial to expand Indiana's DNA database. It is a highly effective tool, used to match DNA evidence in order to solve crimes, as well as to exonerate the innocent.

Improving the sex offender registry and providing for GPS monitoring of sex offenders were other accomplishments this session. The problem of human trafficking and helping victims was dealt with, as well. Disruptions at funerals, the ISTEP testing program, wine shipping, "reverse" 911 — these were all part of the agenda this year. Quite a plateful.

These issues, and others, will be described here and in subsequent newsletters. It was a "short" session, but one that was long on accomplishments, many of which get little if any news coverage.

It is a privilege to participate in such wide-ranging debate and an honor to serve you in the state Senate. Thank you for allowing me the opportunity. God bless.

Sincerely yours,

*Joe*

## Eminent Domain Changes Protect Property Owners

Much work was done on a wide variety of issues during the recent legislative session. Improving Indiana's eminent domain statutes was an issue that was addressed.

The right to own property is fundamental to the American way of life. We are all familiar with the phrase "life, liberty, and the pursuit of happiness" contained in our Declaration of Independence. However, at the time the Declaration was issued, many Americans listed such basic God-given human rights as "life, liberty and property."

Last summer, the U.S. Supreme Court issued a ruling that threatened the right to own property. In *Kelo v. City of New London*, the court said that government may "take" private property for economic development. In other words, as then-Justice Sandra Day O'Connor wrote, "Nothing is to prevent the state from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

The Supreme Court, however, indicated that state legislatures may further restrict the use of eminent domain by state and local governments. This year, the Indiana General Assembly did exactly that.

Last summer, the Eminent Domain Study Committee met to review Indiana's property rights laws to see how they could be improved. Many of the committee's conclusions have been adopted in the form of House Enrolled Act 1010.

Perhaps most importantly, the new law requires the reason for using eminent domain be something that benefits the public in general. Thus, eminent domain can be used for a legitimate government purpose, but not simply to increase a local government's tax base while benefiting a private developer.

Other provisions of the new law include:

have recently been released from prison. As these people re-enter society, they need certain skills in order to become productive, responsible citizens.

Senate Enrolled Act 232 makes several changes to Indiana's jury system. The legislation removes certain exemptions from jury duty, which will make juries more representative of the entire population, thereby creating a more fair court system. The Act also allows a person summoned for jury duty to delay serving for up to one year. The prospective juror must select an alternate date for service at the time of the deferral, and the deferral must be due to hardship, extreme inconvenience, or necessity.



Further, SEA 232 protects employees who are serving as jurors from adverse actions by their employers. The bill has a provision which prevents employers from taking any negative action against employees who must serve on juries, as long as the employer is given reasonable notice. The employer may not require a person summoned for duty to use vacation or sick days to make up for their absence at work.

It is important to take positive, well-considered steps to improve our system of justice. The state legislature acted on a wide variety of issues during this year's "short" session, and improvements to our judicial system were a significant part of this work.

## Legislature Improves Indiana Court System

Each year the General Assembly enacts legislation aimed at improving Indiana's judicial system. This year judges from St. Joseph County sought legislation to strengthen domestic relations counseling services. The concept was well-received throughout the state. As a result, House Enrolled Act 1156 included language authorizing the establishment of domestic relations counseling bureaus and the setting of fee schedules to be approved by county fiscal bodies. The purpose is to better handle what can be very difficult family problems.

Another bill, Senate Enrolled Act 84, concerns rehabilitation, which is an essential aspect of the release of prisoners. In recent years, Indiana has had a recidivism rate of 40 percent. That means for every 10 prisoners released, four end up back in prison within three years. The goal of this bill is to provide more comprehensive rehabilitation services in order to help reduce this rate.

SEA 84 allows city or county courts to establish re-entry courts to aid in rehabilitation. The re-entry courts may offer supervision, offender assessment, judicial involvement, case management, and program evaluation. If a re-entry court is certified by the division of mental health and addiction, it may also offer counseling and rehabilitative care.

This new law will create more opportunities to help those who

placing time restrictions on eminent domain so that property owners are not left in limbo for many years; requiring just compensation for Hoosier property owners; and, mandating good-faith negotiations by the government entity toward the property owner.

When used appropriately, eminent domain can help provide important public benefits, such as roads and parks. HEA 1010 aims to ensure that this tool is not abused at the expense of Hoosiers' right to own private property.



# Highway Development Program Passes General Assembly

Few dispute that Indiana's highway system needs improvement. Highway projects large and small are lined up all across the state, but funding for the projects has not been available. Governor Mitch Daniels reviewed the list of proposed projects and identified a funding gap of at least \$2.8 billion.

Besides I-69, important state construction projects include an upgrade of U.S. 31 between South Bend and Indianapolis, "Fort to Port" (to improve U.S. 24 east of Ft. Wayne into Ohio), the Hoosier Heartland Corridor, and at least two bridges over the Ohio River in southern Indiana.

Funding options included increasing gasoline taxes, which was not a popular option. Another included bonding, using future highway revenue from the federal government and also increased toll road receipts as a way to pay off the bonds. Adding such heavy debt obligations to the state budget was not a popular option, either. Also, it is unlikely that sufficient funds could be raised using this method to fill the funding gap.

Governor Daniels set forth a 10-year highway construction proposal, called "Major Moves." Detailed information is provided through this internet link: <http://www.in.gov/gov/majormoves/glance.html>

This proposal had two main funding sources. The first was the 75-year lease of the Indiana Toll Road to an Australian-Spanish consortium. Their bid should yield \$3.8 billion to the state to fill that highway funding gap. The second source used "public-private partnerships" (P3s) with tolling for *new* highway construction, especially for the construction of I-69 between Indianapolis and Evansville.

The final version of House Bill 1008 had some differences. For

example, it allowed for a P3 for I-69 with tolling, but only between Evansville and Martinsville, located about 40 miles southwest of Indianapolis. Any tolls between Martinsville and Indianapolis would first require the approval of the General Assembly. That similar approval would be required for the north end of I-69 to pass through Perry Township in Indianapolis is another example.

Elkhart and St. Joseph Counties will benefit from receiving \$40,000,000 each from lease proceeds, but residents would continue to pay tolls on I-80/90. Several of us fought for an income tax credit, which would reimburse toll road users who file Indiana income tax returns for tolls paid, up to \$300 per person. Although tax credit language passed the Senate, it was not included in the final version of the bill.

A March 17 editorial in the *Elkhart Truth* stated, "Zakas worked tirelessly—even up to the last hours of the session—to get a \$300 tax credit."

According to a Dec. 6, 1953, *Indianapolis Times* newspaper article, "Indiana's east-west toll road will be paid off by sometime in 1976, if engineers' estimates of earnings stand up." The toll road has been a great benefit to the state of Indiana since it opened in 1956, a fact that has not been sufficiently recognized.

Voting "no" on the bill was difficult, nevertheless, because of the governor's concern for the overall well-being of the whole state. My own concern focused on the northern part of Indiana. It is an understatement to say that much controversy developed during the session, along with uncertainty, confusion, and hurt feelings. The questions raised by citizens in northern Indiana and across the whole state have been fair ones. Many questions were answered, but not all.

## TAXES

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passed legislation that would allow county governments and taxpayers the opportunity to shift funding for local government from a property tax base to an income tax base. Essentially, each county would be able to choose whether to raise revenue from property taxes or from local income taxes. If income taxes are chosen as the replacement, property tax levies for all operating budgets would be frozen at current levels. The shift in revenue sources would occur without an overall increase in taxation. This would have allowed counties to *freeze* property taxes at current levels in that way. The plan passed this year also allowed for an additional option, to increase the local income tax by up to 1 percent in order to *reduce* property taxes by an average of

about 20 percent.

Replacing property taxes with other local sources besides local income taxes has been proposed, as well. Options have included the possibility of a local sales tax, a local food and beverage tax, and a local innkeeper's tax. These proposals should be coupled with tighter spending controls on local government, and a requirement for more efficient budget management.

Statistics show that Indiana has become overly reliant on property taxes to fund schools and local government. Indiana funds 89 percent of these with property taxes. The national average is 78 percent and falling.

Looking at the matter in another way, Indiana relies on property taxes more, when compared to reliance on sales and income taxes. For schools and local governments,

property taxes provide 37.2 percent of income from "the big three" compared to a national average of 32.4 percent and falling.

Property taxes are levied and collected by schools and local governments. They fund local entities such as cities, towns, bus services, airports, schools, libraries, and fire departments. State government is working to find ways to help homeowners while enabling local governments to improve operations. I am pleased that legislators were able to help Hoosier homeowners on this front, but more needs to be done.

The General Assembly has acted to provide property tax relief for homeowners for 2006. However, unless Indiana moves to decrease reliance on property taxes and allow local governments alternative ways to generate revenues, it will be difficult to protect homeowners from continued increases in property taxes.

Sen. Joe Zakas files a bill in the opening days of the 2006 legislative session. Among other bills, Zakas filed Senate Bill 17 to provide an income tax credit to reimburse for tolls paid. The purpose was to provide relief to northern Indiana residents who use the toll road.

This year, 394 Senate bills were introduced, and 107 became law. Additionally, 443 House bills were introduced, and 86 became law.



## More Property Tax Relief Needed

Homeowners in Indiana received some property tax relief from actions taken late Tuesday evening on the last session day of the General Assembly. Legislators passed a bill that will increase the state's Homestead Credit from 20 percent to 28 percent. For 2006 that will entail the state providing an additional \$100 million to reduce property tax bills for every Hoosier homeowner.

This means that the tax bill for the average homeowner will be reduced by about 5 percent this year. It is important to note that this is an "average." In some areas, property taxes are figured to increase by more than 5 percent, and less than that in other areas of the state. Thus, some taxpayers should see an actual reduction, while others would not. Taxpayers living in districts where new schools, fire stations or libraries are being built may not see an actual reduction. However, the tax bill for every homeowner in the state will be reduced as a result of the new law.

For 2007, the bill increased the standard deduction for homeowners from \$35,000 to \$45,000. This will lower property taxes for homeowners by about 5 percent on average next year.

In addition, the legislation provides for a 2 percent cap on property taxes. No homeowner will be required to pay more than 2 percent of the assessed value of their home in property taxes in 2008. For business and commercial property, the 2 percent cap applies for taxes payable in 2010.

### Long term solutions are needed

The measures passed this year are not long term solutions. The General Assembly was unable to come to an agreement on how to pro-

vide permanent property tax relief. Taxpayers can expect little relief past 2006. Two factors are working together to push property taxes higher for homeowners.

First, local tax levies fueled primarily by new construction are growing too quickly. Property taxes, which are levied and collected by local—not state—government, fund local entities such as cities, towns, townships, schools, libraries, and fire departments. Property taxes grow each year to fund normal increases for such things as fuel, utilities and health insurance for employees. These kinds of normal operating costs are not a major problem. State funds are now used to pay for more than 80 percent of school operating budgets. So, school operating increases are not fueling property tax increases. Troublesome increases in property tax levies result primarily from new construction. Local governments and especially schools have embarked on building programs.

Debt incurred to finance construction of new schools, libraries and fire stations is funded almost exclusively by property taxes. On a statewide basis from 2001 to 2005 school debt service levies alone grew from \$627 million to \$977 million—an average annual increase of 11.7 percent.

As to the second factor, for many years property was reassessed every 5 or 6 years. To avoid the big jumps in assessed value that occurred with each reassessment the General Assembly passed legislation that will require "annual adjustments" in assessed values to smooth out the big increases that normally occur with reassessment and provide for more stability in the assessing system. The first "annual adjustment" will be reflected in 2007 tax bills. However, since it has been five years since property was last reassessed, this first "annual adjustment" will feel more like a general reassessment. It is estimated the assessed value of residential property could rise by as much as 30 percent—much faster than increases for business property. If this occurs, it will result in a significant shift in property taxes from business property to residential property and farmland. It is estimated that on average 2007 statewide property taxes on homesteads could increase by 15.5 percent. Increases could be higher in areas where new schools or libraries are being constructed.

### Alternatives to property taxes

Efforts are underway, on a bipartisan basis, to develop alternative sources of local revenue. In each of the last two sessions, the Senate has

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